

**Mohawk Industries, Inc. and Union of Needletrades,
Industrial and Textile Employees, AFL–CIO.**
Cases 10–CA–29489 and 10–CA–29582

August 20, 2001

DECISION AND ORDER

**BY CHAIRMAN HURTGEN AND MEMBERS
TRUESDALE AND WALSH**

On May 29, 1998, Administrative Law Judge Lawrence W. Cullen issued the attached decision. The General Counsel, the Charging Party, and the Respondent filed exceptions and supporting briefs and answering briefs. The General Counsel and the Charging Party filed reply briefs.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified.

¹ The Respondent, the Charging Party, and the General Counsel have excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enf'd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

No exceptions were filed to the judge's findings that the Respondent violated Sec. 8(a)(1) by: interrogating employee Silvers and creating the impression of surveillance and threatening him with plant closure, reprisal and the futility of selecting the Union; threatening employee Rogers and others supervised by Crider with plant closure and threatening to get rid of union agitators and "ride them" once "this mess is over"; threatening employees Tudor, Gladen, and Sutterbook that the Respondent would discharge whoever removed antiunion literature from the break room door; interrogating employee Atkisson and threatening him with plant closure, job loss, and loss of benefits; interrogating employee King; threatening to close down the plant; threatening employee Rapp with relocation of machinery; changing the telephone policy; and threatening employee Baumgardner with a loss of benefits. Further, no exceptions were filed to the judge's findings that the Respondent violated Sec. 8(a)(3) and (1) by issuing warnings to the heister drivers, Roy King, Scott Gaylor (for distributing union literature), and Billy Rapp. In addition, no exceptions were filed to the judge's dismissal of the allegations that the Respondent violated the Act by issuing a verbal warning to Scott Gaylor for poor production, and by rescinding Mike Fowler's light duty assignment.

Because they would be cumulative, we find it unnecessary to pass on the judge's findings that the Respondent unlawfully threatened and interrogated Rapp when Supervisor Clata Crider asked him if he knew who had torn down antiunion literature from the break room door, and when Rapp said he had done so, she asked him if he knew that he could be discharged for it.

The Respondent filed a motion to withdraw certain exceptions concerning the judge's finding that the Respondent violated Sec. 8(a)(3) and (1) by discharging Rodney Atkisson and Chris Johnson because it reached a settlement agreement resolving the matter with the Charging Party. The Charging Party filed a response stating that it does not

1. We adopt the judge's finding that the Respondent violated Section 8(a)(1) by soliciting the revocation of union authorization cards. The judge implicitly credited employees William Doug Nicholson, Jerry Ray Tate, and Mike Fowler, who testified that Supervisor Ricky Coats solicited employees to get their signed authorization cards back from the Union. At a regular employee meeting, Coats told employees that he had an address to which they could write to get their cards back. At the same or another meeting, Coats told them that he had a form employees could use if they wished to get their cards back and that these forms could be obtained from the Respondent's office or employees could go to a particular hotel room (presumed by the judge to be the union organizer's room) to personally request the return of their cards.

The Board declared in *Vestal Nursing Center*, 328 NLRB 87, 101 (1999), that

oppose the motion and the General Counsel filed a response stating its support for the motion. Accordingly, we grant the Respondent's motion to withdraw certain exceptions and will not consider the judge's findings with respect to the discharges of Atkisson and Chris Johnson any further herein. The General Counsel acknowledges that Atkisson and Chris Johnson have already been paid full backpay including interest, and have both waived reinstatement by the Respondent. Further, the Respondent has confirmed, in writing, to both individuals that it has expunged any reference to the discharges from its records. We have accordingly modified the judge's recommended Order to delete these provisions and have substituted a new notice to employees referring to the remedial action already taken by the Respondent.

² The General Counsel and the Charging Party both filed motions to strike portions of the Respondent's answering brief because the Respondent includes, discusses, and relies on documents attached to it (attachments A and B) that were not admitted into the record. In this regard, we note that the judge found in the hearing that the Respondent had not fully complied with the General Counsel's subpoena and therefore directed that the Respondent provide requested documents, which he ruled could be submitted by the General Counsel after close of the hearing. The General Counsel submitted the documents into evidence and asserts that they show that the Respondent subjected Edna Tudor and Debra Johnson to disparate treatment. In its answering brief, with attachments A and B, the Respondent attempts to respond to the documents submitted by the General Counsel. We find merit in the General Counsel's and the Charging Party's motions and, accordingly, we strike attachments A and B to the Respondent's answering brief and give no weight to the Respondent's arguments relying on the attachments. We also find no merit in the Respondent's exceptions to the judge's denial of its motion to reopen the record to allow testimony concerning the documents.

We adopt, however, the judge's dismissal of the allegations that the Respondent violated Sec. 8(a)(3) and (1) by issuing Tudor and Debra Johnson written warnings and discharging Johnson because the judge credited the Respondent's witnesses' testimony that they had legitimate nondiscriminatory reasons for the disciplinary actions. The judge credited these witnesses while noting that, although the documents show that there has been some disparity in the imposition of discipline, there is also evidence that discipline has been imposed for producing defective carpet.

[a]s a general rule, an employer may not solicit employees to revoke their authorization cards. *Uniontown Hospital Assn.*, 277 NLRB 1289, 1307 (1985). An employer may, however, advise employees that they may revoke their authorization cards, so long as the employer neither offers assistance in doing so or seeks to monitor whether employees do so nor otherwise creates an atmosphere wherein employees would tend to feel peril in refraining from revoking. *R. L. White Co.*, 262 NLRB 575, 576 (1982). Thus, an employer may not offer assistance to employees in revoking authorization cards in the context of other contemporaneous ULPs. *Escada (USA), Inc.*, 304 NLRB 845, 849 (1991) (distributing a sample revocation letter to employees in the context of other unfair labor practices unlawful).

Accord: *Chelsea Homes*, 298 NLRB 813, 834 (1990), enfd. mem. 962 F.2d 2 (2d Cir. 1992) (distinction drawn between lawfully providing “ministerial or passive aid in withdrawing from union membership” and unlawfully “actively solicit[ing], encourag[ing], and assist[ing] such withdrawals”).

Thus, the Board, in the context of unfair labor practices including interrogation and serious threats, found an employer’s advice to employees that they had the right to withdraw their signatures from authorization cards or petitions on behalf of a union to be unlawful. *L’Eggs Products*, 236 NLRB 354, 389 (1978), enfd. in relevant part 619 F.2d 1337 (9th Cir. 1980). Likewise, in *Chelsea Homes*, 298 NLRB at 834, the employer engaged in unfair labor practices that included threats and discriminatory discharges and the Board found unlawful the employer’s provision of a sample form and preaddressed envelope to assist employees in revocation. On the other hand, in *Mid-Mountain Foods*, 332 NLRB No. 19 (2000), slip op. at 3, the Board refused to find a violation. In that case, the employer committed only a few isolated unfair labor practices in a 200-employee unit over a 4-month period and “neither tracked whether employees availed themselves of their right to revoke their union authorizations nor assisted them in the revocation process beyond simply telling them about the forms.” *Id.*

Here, Supervisor Coats told employees at one meeting that one option for obtaining revocation forms was to visit the Respondent’s office, giving the company an opportunity to observe whether they “availed themselves of their right to revoke their union authorizations.” Further, the Respondent committed numerous and substantial unfair labor practices close in time to the solicitation to employees to revoke cards. Between April and mid-June, the Respondent’s misconduct included unlawfully threatening plant closure or relocation, discharge, loss of

jobs and benefits, and unspecified reprisals. It also threatened employees that it had a list of union supporters and planned to “ride” the instigators and issue warnings, and threatened them with the futility of selecting the Union as their bargaining representative. Further, it unlawfully interrogated employees and created among them an impression of surveillance of their union activity. Finally, the Respondent discharged two employees in violation of the Act. In these circumstances, there can be no question under settled case law that the Respondent’s solicitation of employees to revoke authorization cards was an independent unfair labor practice.³

2. We agree with the judge that the Respondent violated Section 8(a)(3) and (1) of the Act by issuing a verbal warning to employee Brenda Furry for distributing union literature in work areas and posting literature on the bulletin board. Because the Respondent had no policy regarding literature distribution, it was obliged to shoulder the burden of establishing that the distribution interfered with Furry’s work or the work of other employees and was the true reason for the discharge. See *Miller’s Discount Department Stores*, 198 NLRB 281 (1972), enfd. 496 F.2d 484 (6th Cir. 1974) (employee discharge and prohibition of solicitation unlawful where, absent valid rule, employer was unable to show solicitation involved such work interference); accord: *Volkswagen South Atlantic*, 202 NLRB 485, 491 (1973), enfd. mem. 487 F.2d 1398 (4th Cir. 1973). The Respondent did not meet this burden. Although the Respondent did have a policy restricting use of the bulletin board to authorized information regarding the business of the company, we agree with the judge that the evidence shows that the Respondent permitted employees to post, without penalty, personal advertisements. See *Venture Industries*, 330 NLRB 1133 (2000) (employer unlawfully removed prounion literature from the bulletin board where it permitted employees to post other notices). Accordingly, the Respondent, by singling Furry out for discipline because she posted union literature, violated the Act. See *Bluebonnet Express, Inc.*, 271 NLRB 433, 440 (1984), enfd. 768 F.2d 1348 (5th Cir. 1985).

³ Contrary to our dissenting colleague, we do not find the Respondent’s solicitation of revocation to be merely “ministerial” and therefore distinguishable from the solicitation in *Vestal Nursing Center*, supra. We recognize that the manner and number of times the employer in *Vestal Nursing Center* advised employees and offered assistance differed from the manner and number in this case. However, the cases are similar in a key respect: in both, the employer’s conduct in advising employees that they may revoke their cards and offering its assistance, in the context of its numerous unfair labor practices, unlawfully created an atmosphere in which employees would tend to feel peril in refraining from revoking their cards. E.g. *R. L. White*, supra.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Mohawk Industries, Inc., Calhoun, Georgia, its officers, agents, successors, and assigns, shall take the action set forth in the Order as modified.

1. Delete paragraphs 2(a) and 2(b) and reletter the subsequent paragraphs.

2. Substitute the following for paragraph 2(c).

“(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful warnings issued to the heister drivers, employees Roy King, Brenda Furry, Billy Rapp, and Scott Gaylor, and within 3 days thereafter, notify the employees in writing that this has been done and that the warnings will not be used against them in any way.”

3. Substitute the attached notice for that of the administrative law judge.

CHAIRMAN HURTGEN, dissenting in part.

Contrary to my colleagues, I do not find that the Respondent violated Section 8(a)(1) of the Act by soliciting the revocation of union authorization cards.¹ My colleagues rely on *Vestal Nursing Center*, 328 NLRB 87 (1999). In that case, the Board affirmed the administrative law judge’s finding that the respondent’s efforts to have employees revoke authorization cards were unlawful. *Vestal*, however, is distinguishable from the instant case.

In *Vestal*, the respondent, inter alia, sent letters to its employees urging them to revoke their cards, addressed and mailed revocation forms to its employees’ homes, and addressed, stamped, and mailed completed forms to the union on the employees’ behalf.

Thus, in a letter sent to employees by *Vestal*, employees were told, inter alia:

You can revoke a card that you have signed by sending the union a note saying: “I hereby revoke any authorization card given to Local 200 SEIU.” Date it and sign it and mail it to the union. Be sure to make a copy for yourself. You also have the right to demand to have the card returned to you.

In a second letter to employees, *Vestal*’s administrator, Denise Johnson, first noted newspaper articles adverse to the union and the arrest of a union organizer, then stated:

I am sure that the SEIU organizers withhold this information about their Union when they try to push people into signing membership cards. If you signed a card without knowing all the facts and wish to revoke it, you can. You can send the enclosed card revocation to the Union, today. Be sure to keep a copy, because they may say they never got it.

A revocation form was enclosed with this letter.

In a flyer prepared by *Vestal*, Johnson wrote:

If you signed a card—you can revoke it. Talk to your co-workers. Ask them why this Union has to lie, threaten and coerce you, and tell them you will not support anyone who engages in these kinds of activities.

A *Vestal* employee asked Johnson about revoking her card. Johnson gave her a revocation form, said that a lot of employees were revoking their cards, and asked if she (Johnson) could use her name. The employee said that Johnson could do so, and Johnson named two other employees who she said were opposing the union. Johnson gave the employee some extra revocation forms to take with her. The employee filled out her own revocation form in Johnson’s office. This form was mailed to the union in an envelope provided by the respondent, which also paid the postage. Johnson admitted giving revocation forms to two other employees (in addition to the two she had named above) in her office, and both of these forms arrived at the union in similar envelopes with *Vestal*’s postage meter number on them. The revocation forms of two other employees also arrived in *Vestal* postage-metered envelopes with the same handwriting for the return address. It would appear that this procedure was followed with at least six revocation forms.

In the instant case, by contrast, Coats merely told employees that he had an address to which they could write to get their cards back, that he had a form employees could use if they wished to get their cards back, and that these forms could be obtained from the Respondent’s office or employees could go to a particular hotel room (apparently the union organizer’s room) to request the return of their cards.

In my view, there is a huge disparity between what *Vestal* did and what the instant Respondent did. Among other things, the Respondent did not send letters to its employees urging them to revoke their cards. The Respondent did not address and mail revocation forms to its employees. The Respondent did not address, stamp, and mail completed forms to the Union on the employees’ behalf. The Respondent did not give its employees detailed instructions like the ones contained in *Vestal*’s letters to its employees. The Respondent did not tell its

¹ My colleagues find it unnecessary to pass on the judge’s findings that the Respondent, through Supervisor Clata Crider, unlawfully threatened and interrogated employee Billy Rapp. I would dismiss these allegations.

employees about newspaper articles adverse to the Union or the arrest of a union organizer. The Respondent did not tell its employees that union organizers withheld such information about the Union from the employees. The Respondent did not tell its employees that the Union tries to push people into signing membership cards. The Respondent did not tell its employees that the Union might falsely claim never to have received revocation forms sent to it. The Respondent did not instruct its employees to ask their coworkers why the Union had to lie, threaten and coerce employees. The Respondent did not instruct its employees to tell their coworkers that they would not support anyone who engaged in such activities.

My colleagues state that here, as in *Vestal*, the Respondent created an atmosphere in which employees would tend to feel peril in refraining from revoking their cards. In light of the many differences noted above between *Vestal* and the instant case, I do not believe that the General Counsel has shown that the Respondent's employees would reasonably tend to feel peril if they declined to revoke their cards.

My colleagues also say that the Respondent advised employees that they could revoke their cards, and that Respondent offered assistance to the employees in this respect. As to the former point, I do not believe that the act of informing employees of their statutory rights is unlawful. As to the latter point, the "assistance," if it can be called that, was minimal.

Finally, I recognize that the Respondent committed other unfair labor practices. This conduct can and should be remedied. However, it is a mistake to say that this conduct renders unlawful the otherwise privileged conduct involved here.

The Respondent did not tell its employees that a lot of employees were revoking their cards. The Respondent did not ask its employees if it could use their names. The Respondent did not name, to its employees, specific coworkers opposed to the Union. The Respondent did not give employees extra revocation forms to take with them. The Respondent was not found to have had employees filling out revocation forms in the office of a high-ranking official of the Respondent, or to have given revocation forms to employees in such an office.

These differences, in my view, render the instant case more similar to *Mid-Mountain Foods*, 332 NLRB No. 19 (2000), also mentioned by my colleagues, than to *Vestal*. Here, as in *Mid-Mountain*, there is no finding that the Respondent tracked whether employees availed themselves of their right to revoke their cards. Also, as in *Mid-Mountain*, the Respondent's employees were not required to go to their supervisors to obtain revocation forms.

In sum, with respect to this allegation, the Respondent's activities were more similar to those of *Mid-Mountain*, which simply told its employees about the revocation forms, than to those of *Vestal*. The aid rendered by the Respondent in this regard can, in my view, fairly be described as ministerial. Accordingly, notwithstanding the other unfair labor practices committed by the Respondent, I would dismiss this allegation.

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

- To organize
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To act together for other mutual aid or protection
- To choose not to engage in any of these protected concerted activities.

WE WILL NOT engage in unlawful interrogation of our employees concerning their union sympathies.

WE WILL NOT create the impression of surveillance of our employees' union activities.

WE WILL NOT threaten our employees with plant closure or relocation, discharge, loss of jobs and benefits, unspecified reprisals that we have a list of union supporters and that the instigators are at the top of the list and we plan to "ride them" and to issue warnings; and with the futility of the selection of the Union as their collective-bargaining representative because we will not sign a labor agreement and/or will shut down and/or relocate because of their union activities.

WE WILL NOT instigate, facilitate, and/or assist the revocation of the employees' signed union cards.

WE WILL NOT enforce an invalid bulletin board policy restricting the posting of pronoun notices and the distribution of pronoun literature in nonwork areas while posting and/or permitting the posting of antiunion notices and the distribution of antiunion literature.

WE WILL NOT restrict telephone use in order to stem the union campaign.

WE WILL NOT discharge or issue warnings to or otherwise discriminate against any of you for supporting the Union of Needletrade, Industrial and Textile Employees, AFL-CIO (UNITE) or any other union.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of the Board's Order, remove from our files any reference to the unlawful warnings issued to the heister drivers, Roy King, Brenda Furry, Billy Rapp, and Scott Gaylor, and WE WILL, within 3 days thereafter, notify each of them in writing that this has been done and that the warnings will not be used against them in any way.

Rodney Atkisson and Chris Johnson have waived their rights to full reinstatement to their former jobs, and WE HAVE made them whole for any loss of earnings and other benefits resulting from their unlawful discharges, and WE HAVE notified them in writing that the discharges will not be used against them in any way.

MOHAWK INDUSTRIES, INC.

Katherine Chahroui, Esq. and Karen N. Neilsen, Esq., for the General Counsel.

Townsell G. Marshall Jr., Esq. and Timothy A. Davis, Esq., for the Respondent.

Lori M. Smith, Esq., for the Charging Party.

DECISION

STATEMENT OF THE CASE

LAWRENCE W. CULLEN, Administrative Law Judge. This consolidated case was heard before me in Calhoun, Georgia, on January 21, 22, and 23, 1997. An order consolidating cases, amended consolidated complaint, and notice of hearing was filed by the Regional Director for Region 10 of the National Labor Relations Board (the Board) on January 7, 1997. The complaint in Case 10-CA-29489 is based on a first amended charge filed by the Union of Needletrades, Industrial and Textile Employees, AFL-CIO (the Charging Party, or the Union, or UNITE) on January 6, 1997. The complaint in Case 10-CA-29582 is based on a first amended charge filed by the Charging Party on January 6, 1997. The complaint as amended at the hearing, alleges that Mohawk Industries, Inc. (Respondent, or the Company, or Mohawk) violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act). Respondent has by its answer filed on January 15, 1997, denied the commission of any violations of the Act.

On the entire record in this proceeding, including my observations of the witnesses who testified here and after considering the parties' positions at the hearing and their briefs, I make the following

FINDINGS OF FACT AND CONCLUSIONS OF LAW¹

I. JURISDICTION

The complaint alleges, Respondent admits, and I find that Respondent was and has been at all times material, a Delaware corporation, with an office and place of business in Calhoun, Georgia, where it has been engaged in the business of manufacturing carpet, that during the past 12-month period Respondent, in conducting its aforesaid business operations, sold and shipped goods valued in excess of \$50,000 directly to purchasers outside of the State of Georgia and it has been an employer within the meaning of Section 2(2), (6), and (7) of the Act.

The Labor Organization

The complaint alleges, Respondent admits, and I find that at all times material the Union has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES²

The Company operates a main complex and a distribution center located in Calhoun, Georgia, and employs a total of 1700 employees including nonbargaining personnel at these two facilities. The main complex is composed of a number of buildings housing different departments. The carpet manufacturing process is initiated in the twisting department in which single-ply raw yarn is twisted together and then heated to obtain a finished product. It is then packed to send to the tufting department. There is another building at the main complex which is called the Spinning Plant. In the tufting department, a creeler takes the cones of yarn from the cages in which they have been transported and places them on a creel rack which is attached to a tufting machine. The yarn is then threaded through a number of needles which are used to sew the spools of yarn into the backing of the carpet. Some of the tufting machines have overhead clutches through which the yarn is threaded prior to the needles. The clutches are positioned side by side for 12 feet which constitutes the width of the carpet. There are approximately 3 clutches per foot, for a total of 36 clutches per machine. Each clutch has eight spools of yarn threaded through it. After a carpet has been run, the remaining scraps of yarn are wrapped around beams by warpers. The beams are put into another type of tufting machine called a beam machine. At various places in the production process, forklifts called heisters are used to move the product around the facility. Thus a pole heister moves rolls of carpet from tufting machines to the tunnel area from where the carpeting is taken to the printer for the dying process. Employees called heister drivers are located in several departments. Respondent's other facility is the distribution center and includes several departments such as shipping, cut order, quality assurance, and reinspection. On the day shift at the distribution center there is a group of 25 heister drivers in the shipping department under the

¹ The General Counsel's posthearing exhibits GC Exhs. 23(a) through (d) and 24 through 46 are received. Respondent's motion to reopen the hearing is denied.

² The following includes a composite of the credited testimony of the witnesses at the hearing. All dates are in 1996 unless otherwise specified.

supervision of John Rainwater and another large group of heister drivers in the cut order department under the supervision of Russ Jones.

In April 1996, the Union commenced an organizing campaign to organize the production workers at Respondent's two facilities. The Union handbilled at Respondent's facilities in Calhoun on April 15. On May 13 the Union filed a petition to represent approximately 900 employees at these facilities. The parties entered into a stipulated election agreement and an election was scheduled for June 22 and 24. On June 17 the petition for an election was blocked and remained blocked at the time of the hearing by the instant charges and consolidated complaint.

The complaint alleges and the General Counsel and the Charging Party contend that during the course of the election campaign between April and mid-June when organizing activity ceased, the Respondent committed numerous violations of Section 8(a)(1) of the Act including interrogation, threats, creation of the impression of surveillance and the solicitation of the withdrawal of union authorization cards which had been signed by employees and maintained a strong statement of antiunionism in its policy manual, implied threats of plant closure in its antiunion campaign literature, and also injected race and regional differences into the campaign. The General Counsel presented un rebutted credible testimony (much of it elicited from current employees) supporting most of the various 8(a)(1) allegations. The Respondent presented only very limited testimony in an attempt to rebut the evidence of these violations and contended that they were only alleged to have been committed by a handful of supervisors whose conduct was not attributable to Respondent and that these supervisors were not involved in various employment disciplinary matters alleged as violations of Section 8(a)(3) of the Act in this case. I found the un rebutted testimony of the employees called by the General Counsel to testify concerning the 8(a)(1) violations credible and find that it established the violations of Section 8(a)(1) of the Act to the extent found in this decision.

I find that Respondent violated Section 8(a)(1) of the Act by its tufting supervisor, Clata Crider, as follows:

I credit the un rebutted testimony of current employee Wesley Silvers that in May, Crider asked him where his nonunion shirt was and he told her he wished to remain neutral and that she then commented that they had not brainwashed him and he repeated he wished to remain neutral. Respondent did not call Crider as a witness. I find this inquiry and comments by Crider were unlawful interrogation and that Respondent thereby violated Section 8(a)(1) of the Act. *Rossmore House*, 269 NLRB 1176, 1177 (1984), enfd. sub nom. *Hotel & Restaurant Employees Local 11 v. NLRB*, 760 F.2d 1006 (9th Cir. 1985). I further find that by her above comments Crider also created an impression of surveillance which tended to be coercive of Silvers' Section 7 rights and that Respondent thereby violated Section 8(a)(1) of the Act. *Belcher Towing Co. v. NLRB*, 726 F.2d 705 (11th Cir. 1984).

Silvers further testified that during this same conversation Crider then stated that "I've been going to meetings and I've heard from the horse's mouth if people vote the Union in that the Company will close, and if they didn't close that they would keep the people who voted no and let them work, and the

people that voted yes, they would keep them out on strike because the Company would not agree to no contract." I credit Silvers' un rebutted testimony in this regard also and find that Respondent thereby violated Section 8(a)(1) of the Act by the threat of plant closure, *Vesuvio Foods Co.*, 321 NLRB 328 (1996), and also violated Section 8(a)(1) of the Act by conveying an impression of surveillance and the threat of the futility of selecting the Union as the employees' bargaining representative as the Company would keep the union supporters out on strike as the Company would not agree to a collective-bargaining agreement with the Union. *Refuse Compactor Service*, 311 NLRB 12, 19 (1993); *Overnite Transportation Co.*, 296 NLRB 669 (1989); and *Kona 60 Minute Photo*, 277 NLRB 867 (1985).

Silvers also testified concerning a conversation with Creel's boss, Aileen Story, at which Crider was present which he placed between April and August. As the General Counsel contends in her brief, I find that this conversation occurred between April and mid-June when the organizational activity ceased. Silvers testified that as he was on his way to the breakroom, Story stopped him and said that he could jeopardize his position by wearing a union pin which he had on his person at the time. He disputed this as he was an hourly employee and Story replied that "you know how this place is. They can find a way to get rid of you." Crider who was standing nearby nodded her head in agreement. Silvers then removed his union pin. I credit Silvers' un rebutted testimony as neither Story nor Crider were called to testify. The General Counsel notes that no testimony was elicited to prove Story's supervisory status but contends that Supervisor Crider's presence and nonverbal acquiescence is sufficient to support a finding of agency attributable to management. I agree and so find. I find that the threat of reprisal issued by Story and affirmed by Crider was unlawful and that Respondent thereby violated Section 8(a)(1) of the Act.

Current employee Carolyn Rogers, a tufting machine operator, testified that near the end of May prior to the Memorial Day weekend that Crider came by making her rounds and told her that "if the Union comes in, Jeff Lauderbaum ('Respondent's President Jeffrey S. Lauderbaum') would close (the) tufting (department) down and move it elsewhere." Former operator Linda Hogan testified that in late spring or early summer, she and Carolyn Rogers were entering the breakroom as Crider was standing near the door. Crider frowned at Rogers who was wearing a prounion button. Hogan, who was also wearing a union button told Crider that if she were not in supervision she would be in favor of the Union also. Crider denied this and told her that the Union would keep her out of a job and starve her to death. Crider also stated that "if the Union came in they're going to close the Tufting department down." Current employee Cherri Coleman testified that in spring or early summer she and other employees were seated at the smoking table outside the breakroom talking about the Union. Crider approached and said, "[I]f the Union comes in, the Company will close the doors." Coleman also testified that a couple of weeks later another incident occurred while she and other employees were seated at the smoker's table outside the breakroom. On this occasion Crider stated that Respondent "had a list of all the people who had sent in union cards, and

that they had the names of the agitators at the top of the list highlighted. . . .” Crider also said that “when this mess is over . . . we’re going to ride them.” Current employee Edna Tudor also testified to the second incident in early spring or summer that she and three other employees including “Cherri” (Coleman) were seated at the smoking table outside the breakroom wearing union buttons and pins. Crider was passing out antiunion T-shirts and an employee asked Crider for one. Crider said she could not have one because she was a temporary employee. Crider then said that the Respondent had “a list of all people who had signed a Union card and their name is highlighted at the top of the list.”

I credit the un rebutted testimony of Rogers, Hogan, Coleman, and Tudor. I find that in the initial incident testified to by Rogers concerning Crider’s comment that Respondent’s president would close the tufting department down and move it was violative of Section 8(a)(1) of the Act. *Vesuvia*, supra. I find that Crider’s comment to Rogers in the second incident that the Union would keep her out of a job and starve her to death as testified to by Hogan and that if the Union came in, Respondent would close the tufting department down as testified to by Hogan and corroborated by Coleman were unlawful threats of job loss and plant closure respectively and that Respondent thereby also violated Section 8(a)(1) of the Act. I find that Crider’s comments that they had a list of union supporters and that when “this mess” (the organizational campaign) was over, Respondent’s management was going to “ride them” created the impression of surveillance and constituted a threat of reprisal against the union supporters and were both violative of Section 8(a)(1) of the Act. *Belcher Towing*, supra.

Tudor also testified that on a Saturday evening in the spring or summer prior to June 7, Crider stopped her, employees Wanda Gladden, and Rachel Sutterbook, near the timeclock and two other employees as they were leaving, and asked who had removed antiunion literature from the breakroom door. The employees denied having done so and Crider then said, “[S]he was sure of one thing. That they would be fired whoever got them off because they was put up there by Management.” I credit Tudor’s un rebutted testimony and find that Respondent violated Section 8(a)(1) of the Act by this threat of discharge.

Current employee Billy Rapp testified that in approximately June or July, Crider approached him at his workstation and asked him who had torn down antiunion literature from the breakroom door. Rapp told her he had done so and Crider then asked if he knew he could be discharged for doing this. He responded no and asked her who had put this literature up and Crider told him it had come directly from Respondent’s personnel department. I credit Rapp’s un rebutted “testimony and find that Crider’s inquiry to Rapp concerning this literature was an unlawful interrogation of his union activities *Rossmore House*, supra, and that the threat of discharge was also unlawful and find that Respondent thereby violated Section 8(a)(1) of the Act by both the interrogation and the threat of discharge. I find this incident occurred in June rather than July as the campaign ended in June.

Former employee and alleged discriminatee Rodney Atkisson who was employed as a winder server on the third shift in

the spinning building testified that in April he was sitting in the breakroom with other employees and Supervisor Robin Chatmon. During a conversation concerning antiunion literature on the breakroom table, Chatmon asked him if he was seriously considering voting for the Union and he replied in the affirmative. Chatmon subsequently told the employees it was “foolhardy to vote for the union, that (if) the union came in the plant could easily shutdown. People would be without jobs. It would just be taking benefits away from the employees.” I credit Atkisson’s un rebutted testimony and find that Respondent unlawfully interrogated Atkisson concerning his union sympathies and threatened plant closure, job loss, and loss of benefits if the employees selected the Union as their collective-bargaining representative in violation of Section 8(a)(1) of the Act. *Rossmore House*, supra; *Vesuvio Foods Co.*, supra.

Current employee Roy King who is employed as a heister driver in the tufting department under the supervision of J. R. Parker testified that around the time of the commencement of the union campaign in April, he was called into a meeting with his supervisor, Parker, and Supervisor Laura Watts and was asked how he felt concerning the Union. I credit his testimony which was un rebutted for although Respondent called Parker and Watts to testify, it did not inquire of either supervisor concerning this incident. Further as the General Counsel asserts in her brief, “The failure to examine a favorable witness regarding any factual issue upon which that witness would likely have knowledge gives rise to an adverse inference regarding any such fact.” *Flexsteel Industries*, 316 NLRB 745, 757 (1995). I accordingly find that Respondent violated Section 8(a)(1) of the Act by its unlawful interrogation of King concerning his union sympathies, *Rossmore House*, supra.

Employee Rodney Atkisson also testified his supervisor, Steve Eivers, asked him if he supported the Union at a meeting with Eivers and another employee in April. Eivers then said if the employees voted for the Union, “the plant would shutdown, they had the funds to shutdown, pick up and leave. Himself, including us would be without jobs” Atkisson also testified concerning a second meeting with Eivers which he placed in June at which Eivers informed him, he could now “legally” ask Atkisson about the Union, and then “asked me how I was going to vote and if I voted yes, the plant would definitely shutdown, pick up and leave. There would be a lot of people without jobs.” I credit Atkisson’s un rebutted testimony as Eivers was not called to testify and I accordingly find that Respondent violated Section 8(a)(1) of the Act by its unlawful interrogation of Atkisson concerning his support of the Union and by the threat of plant closure and job loss if the employees selected the Union as their collective-bargaining representative. *Rossmore House*, supra; *Vesuvio Foods*, supra.

Current employee and alleged discriminatee Scott Gaylor testified that near the end of May he had a “vote no” T-shirt on his work cart in his work area and that Supervisor Linda Williams approached and asked him why he had the “vote no” shirt since she knew he supported the Union. Williams corroborated this testimony and admitted asking “Scott, I thought you supported the Union?” and repeating the inquiry when he did not affirmatively respond to her first inquiry. I find that Respondent thereby unlawfully interrogated Gaylor concerning his

union support in violation of Section 8(a)(1) of the Act. *Rossmore House*, supra.

Current employees and heister drivers William Doug Nicholson, Jerry Ray Tate, and Larry Hall testified that Supervisor John Rainwater threatened closure of Respondent's facility at a daily morning meeting of the shipping department heister drivers on or about April 15. Nicholson testified that Rainwater said the Respondent "probably would close down or maybe move it to Dalton" (a nearby town). Tate testified that Rainwater said the plant might shut down, close, or move to Dalton if the Union came in. Hall testified Rainwater said, "[I]f Union people were to come in that Mohawk Industries would and could probably shut the plant down and relocate in Dalton, or locate some other location and we could all be without a job." Rainwater acknowledged that in this meeting he mentioned the union activity at the plant gate and admitted that he had related his "personal experience" to the employees at this meeting as he had been in a union and the employer had closed the plant and changed names. In response to an inquiry on direct examination whether he had ever told employees in this meeting that if the Union came in, the plant could or would close and be moved to Dalton, he responded, "I have no idea." I credit the specific and mutually corroborative testimony of employees Nicholson, Tate, and Hall which was not specifically rebutted by Rainwater who acknowledged he had "no idea" whether he had made the threat. I find that Respondent violated Section 8(a)(1) of the Act by Rainwater's threat that Respondent would shutdown or move if the Union came in. *Vesuvio Foods*, supra.

Current employee Billy Rapp testified that while he was working on a creel in May, he asked Supervisor Ed Dotson what the Respondent was going to do with several tufting machines which had been unbolted from the floor. Dotson responded Respondent "might be moving them to Galaxy (a related company) they're waiting to see what the Union did first. Dotson also noted that Galaxy had enough space for these machines. I credit Rapp's un rebutted testimony as Dotson was not called to testify. I find that Respondent violated Section 8(a)(1) of the Act by Dotson's threat of relocating the machinery if the Union were selected as the employee's collective-bargaining representative, *Vesuvio Foods*, supra.

Current employee John Brown testified that on April 16 Gary McCarley, who is the supervisor over all of the five shifts in the twisting department told him, "We've got the names of the instigators. We'll take care of (them) when it's over." Brown placed this conversation at 10:30 a.m. near the tube machine in the warehouse. Supervisor McCarley testified he recalled a conversation with Brown concerning overtime but denied having made any comments about union instigators. I credit the testimony of Brown who is a current employee. *Flexsteel Industries*, supra. I accordingly find that Respondent violated Section 8(a)(1) of the Act by creating the impression of surveillance and threatening reprisals. *Belcher Towing*, supra.

Current employees and heister drivers William Doug Nicholson, Jerry Ray Tate, and Mike Fowler testified that Respondent's supervisor, Ricky Coats, solicited employees to get their signed authorization cards back from the Union. Nicholson testified that around the end of April, Coats attended a regular

morning heister driver meeting and told the heister drivers that he had an address they could write to obtain their union authorization cards back. Tate testified that at one of the regular morning meetings for the heister drivers, Coats told them that he had a form that employees could use if they wished to get their union card back, and that these forms could be obtained from Respondent's office or employees could go to room 121 of the Holiday Inn (presumably the union organizer's room) to personally request the return of their union card. Fowler testified that during an employee meeting, Coats told the employees how to obtain the return of their union cards and said he had an address to which the employees could send their request. Coats testified that he was instructed by management to hold meetings for employees during the election campaign and did so and specifically held one on April 22. During this meeting he read Respondent's Exhibit 24 word for word as directed by team member resources (the personnel department which was advising the Respondent on how to conduct its antiunion campaign).

NOTICE

SEVERAL PEOPLE HAVE ASKED HOW TO GET A
SIGNED UNION CARD BACK, SIMPLY WRITE THE
UNION A NOTE ON A POSTCARD TO THEIR MAIN
OFFICE IN NEW YORK CITY AS FOLLOWS:

I HEREBY CANCEL MY UNION CARD
PLEASE SEND IT BACK TO ME AT
(YOUR HOME ADDRESS)

SIGN YOUR NAME
PRINT YOUR NAME

SEND TO:
UNITE
1710 BROADWAY
NEW YORK, NY 10019-5299

Coats denied having made any other comments to the employees at the meeting concerning union cards other than reading them the foregoing statement. However, he did admit making other general statements at the meeting, including telling the employees that Respondent's Exhibit 24 would be posted on a bulletin board for the employees. In this case the Respondent presented no evidence that the assistance of the Respondent in retrieving their union authorization cards had been sought or requested by the employees. Thus, Respondent initiated, sponsored and participated in an effort to "assist" employees with the revocation of their union authorization cards and provided "both the method and the means" for employees to revoke their union cards. I find that this conduct by the Respondent was coercive and that it thereby violated Section 8(a)(1) of the Act. *Adair Standish Corp. v. NLRB*, 912 F.2d 854 (6th Cir. 1990), enfg. 290 NLRB 317 (1988).

Three of the Respondent's heister drivers testified that during the first week of organizing activity in mid-April, Supervisor John Rainwater announced a new policy restricting the use of work area telephones at a morning meeting with the heister drivers. This occurred at the morning meeting following two consecutive daily meetings at which Rainwater had threatened

plant closure and had given the heister drivers a novel group verbal warning for low production. In announcing the new policy regarding use of telephones by the heister drivers, Rainwater told the employees according to the testimony of employee William Nicholson that thereafter all calls must go through him (Rainwater). Heister driver, Jerry Tate, testified that at this meeting Rainwater told the employees that employees could no longer receive telephone calls on the job and that all calls must go through him (Rainwater). Tate testified that there had been no prior restriction and employees had been previously permitted to receive calls directly while at work and the calls had not been routed through a supervisor. Rainwater admitted to this change of policy and contended that telephone calls to the work area had been a problem prior to the policy change and have been a continuing problem since the change. I credit the un rebutted and corroborated testimony of Nicholson and Tate as admitted to by Rainwater. I find that this change in telephone use policy, given the timing of its occurrence during the first week of organizing was coercive and that Respondent thereby violated Section 8(a)(1) of the Act. *House Calls, Inc.*, 304 NLRB 311, 312–313 (1991).

Former employee James Baumgardner, who had been employed at Respondent's distribution center during the period of April 3–18 testified that on either April 16 or 17 at the end of his shift, he was reading antiunion literature on the bulletin board and was laughing when his supervisor Andy Tidmore approached pointing his finger. Tidmore then said, "[I]f the Union and the Company goes to negotiations you will lose all of your benefits as an employee while they're negotiating." Baumgardner told Tidmore that this would not occur and Tidmore said he could bring a lawyer to prove it. They then argued the point and Tidmore then left. I credit Baumgardner's testimony which was un rebutted as Tidmore was not called to testify. I find that Respondent thereby violated Section 8(a)(1) of the Act by this threat of loss of benefits.

The 8(a)(3) Allegations

1. Animus

Respondent contends that the General Counsel has failed to establish its animus against the Union and its supporters. It argues that the 8(a)(1) violations, which were largely unchallenged by Respondent (as no rebuttal was offered by Respondent to counter the testimony of the General Counsel's witnesses concerning them), were isolated and committed by a handful of supervisors. It contends that as the discipline leading to the 8(a)(3) allegations was imposed by supervisors against whom there were no 8(a)(1) allegations, there has been no showing of animus on the part of these supervisors or members of management. It argues that the number of 8(a)(1) violations demonstrating antiunion animus were small in the context of the overall work force of 1700 employees including nonbargaining unit employees. I find however that there were a substantial number of instances of unlawful interrogation of employees and threats of job loss, plant closure, and discipline coupled with disparate treatment of union supporters and their efforts to distribute union literature and to post union literature on its bulletin board. I do not subscribe to Respondent's arguments that the 8(a)(1) violations were limited to a small number

of management members who were operating on their own, and whose conduct can now be disavowed as individual opinions for which Respondent is not responsible. I find rather that the unlawful activities of certain of its supervisors is properly imputed to Respondent. I thus find that Respondent's animus toward the Union and its supporters has been clearly established in this case.

2. Verbal warnings to the heister drivers

Supervisor Rainwater issued a verbal warning to the day-shift shipping department heister drivers under his supervision for low production as testified to by heister drivers Nicholson, Tate, and Hall and as corroborated by Rainwater. The General Counsels contend in their brief that they are not required to demonstrate the Respondent's knowledge of any individual employee's sympathies to establish a prima facie case. The General Counsel must show that the mass action was taken to discourage union activity. *Davis Supermarkets v. NLRB*, 2 F.3d 1162 (D.C. Cir. 1993), enfg. *Davis Supermarkets v. Commercial Workers Local 23*, 306 NLRB 426 (1992). Respondent's animus has been established by the numerous instances of violations of Section 8(a)(1) as set out above and I find that the General Counsel has established that Rainwater engaged in a course of conduct designed to discourage union activities following the appearance of union organizers on April 15 by the threat of plant closure in the regular morning meeting followed by the mass verbal warning the next day and the restrictive telephone policy change the following day. I thus find that the General Counsel has established a prima facie case that Respondent violated Section 8(a)(3) and (1) of the Act by Rainwater's issuance of the verbal warning to the drivers at the meeting for low production. I do not credit Rainwater's contention at the hearing that the employees low production was the true reason for the issuance of the warning and that it would have taken place in the absence of the unlawful motivation, *W. F. Bolin Co.*, 311 NLRB 1118, 1119 (1993). I find that Respondent has failed to rebut the prima facie case by the preponderance of the evidence. *Wright Line*, 251 NLRB 1083 (1980); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984). See *International Carolina Glass Corp.*, 319 NLRB 171, 174 (1995), citing *Limestone Apparel Corp.*, 255 NLRB 722 (1981), enfd. 705 F.2d 799 (6th Cir. 1982), regarding a finding of pretext by an employer precludes the necessity of showing that the action would have been taken in the absence of the proscribed motive.

Rainwater testified that on April 16, he had given the heister drivers the verbal warning for low production as their production for Monday, April 15, had dropped 2 or 3 points. He testified that he had reviewed a production report which he had in his file for the date of April 15. Although all production reports had been subpoenaed by the General Counsel, this report was not furnished to the General Counsel prior to Rainwater's testimony at which time he testified he (Rainwater) had it in his file. At the General Counsel's request he produced the aforesaid production report for April 15, which was introduced into evidence by the General Counsel. However, Rainwater testified that he had turned this document over to Respondent's attorneys. Respondent's attorney in an on the record statement commented that this production report had not been turned over to him and that he himself had not pulled the documents together that had been produced in response to the General Counsel's subpoena. Rainwater also testified in response to the General Counsel's request whether there were any other production records that would reflect this information. Rainwater replied in the negative saying that he put them in the trash although acknowledging that he does a production report every day for each of the employees under his supervision. I find that Respondent's failure to furnish the General Counsel with these reports in response to the subpoena calling for all documentation of production requirements and productivity of heister drivers and Rainwater's testimony that he only maintained the production record for April 15, having trashed all the others,

supports the adverse inference that the other production records would not have supported Rainwater's testimony that the heister drivers actually had low production on April 15. Moreover, I find that the timing of this warning given the day after the initiation of the union leafleting at Respondent's gates by the union organizers supports the inference that the issuance of the warning was in direct response to the union campaign. I thus find that the issuance of the verbal warning to the heister drivers was violative of Section 8(a)(3) and (1) of the Act.

3. Verbal warnings issued to employee Scott Gaylor

Scott Gaylor testified that on April 22 he was issued a verbal warning in the office of Supervisor Linda Williams with Supervisor Burchett present for handing out union literature. Gaylor was a known union supporter as demonstrated by the incident in May when Williams questioned why he had a procompany vote shirt since he was a union supporter. When he denied having done this, Williams then told him that distribution manager, Ricky Coats, had heard him talking to another worker about the Union. When he disputed this charge also, Williams told him the warning was for "loafing." The verbal warning was also noted on his personnel record. Gaylor testified that he received a second warning a month later on May 22 from his supervisor, Burchett, who told him he had been ordered by Williams to issue Gaylor a verbal warning for low production and that if it had been his decision he would not have issued Gaylor the warning. Gaylor asked to meet with Williams and protested the warning.

With respect to the April 22 warning, Gaylor testified he had previously routinely talked with other employees without the imposition of discipline as had other employees. With respect to the May 22 warning for low production Gaylor testified that he had previously been below production standards on several occasions without the imposition of discipline. His testimony is supported by Respondent's Exhibit 22 which shows Gaylor did not meet the 167 pieces per hour standard on five occasions between January 1 and May 22. The Charging Party alleges in her brief that the discipline on May 22 was for low production which occurred in February. Respondent contended at the hearing that employees were not disciplined for low production in those instances where production was delayed because of travel time or slow equipment.

Respondent does not dispute the fact that Williams was aware of Gaylor's support of the Union but claims that the warning for low production was legitimate as Gaylor did not meet the production standard of 167 pieces per hour. It argues that the similarity between Gaylor and his coworker Gary Easterwood is compelling. For the week ending February 17, and March 16, both failed to make the production standard. March 16 was the fourth time Easterwood did not meet the production standard for unexplained reasons and Easterwood was given a verbal warning at this time which was prior to the start of the Union's organizing campaign. It was only after Gaylor accumulated two more low production weeks bringing his total to four instances which were unexplained by travel time or problems with the computer or equipment that Williams instructed Supervisor Rex Burchett to issue the verbal warning to Gaylor.

Analysis

I find that Respondent violated Section 8(a)(3) and (1) of the Act by the issuance of the verbal warning to Gaylor on April 22 which was memorialized on his personnel record. I credit Gaylor's testimony and find that the General Counsel has established a prima facie case that Williams was aware of Gaylor's support of the Union and it was this support for which he was initially being disciplined although the reason for the warning was changed to "loafing" when Gaylor protested that he was not handing out union literature and that he and other employees routinely talked to each other during worktime in the past. I am convinced that the reason for this warning was Respondent's demonstrated animus toward any activities in support of the Union. I find the Respondent has failed to rebut the prima facie case by the preponderance of the evidence. *Wright Line*, supra; *Roure Bertrand Dupont, Inc.*, supra.

I find that the General Counsel has not established a prima facie case of a violation of the Act by the issuance of the May 22 warning to Gaylor for poor production. Assuming arguendo that a prima facie case was established, I find it has been rebutted by the preponderance of the evidence. The issuance of the warning to Gaylor for the fourth unexplained instance of low production was the exact discipline issued to his coworker Easterwood for his fourth unexplained instance of low production. Thus there has been no showing of disparate treatment in this instance. *Sheraton Hotel Waterbury*, 312 NLRB 304, 327 (1993); *Wright Line*, supra; *Roure Bertrand Dupont, Inc.*, supra.

4. Written warning issued to Roy King

Respondent's unlawful interrogation of King concerning his union sympathies was discussed above. Although at that time King did not respond to the interrogation, he testified that in early July he became an open union supporter wearing union hats, buttons, and stickers at work. He also attended union meetings and distributed union literature at the plant gates on a few occasions. On or about July 18 King was issued a written warning by Respondent's supervisor, Laura Watts, for talking to employee Billy Rapp who was an open union supporter. The verbal warning was given to King because Supervisor Ed Dotson had a problem with it as it was "interfering with his (Rapp's) work." King, himself, was not on the clock when he stopped by Rapp's workstation while on the way to his own work area. Rapp was on the clock but did not receive a warning. However, King testified that prior to this, almost nightly he arrived early for work and stopped to talk to other employees including Rapp on the way to his work area without the imposition of any discipline. This testimony concerning King's practice of stopping to talk to him almost every night was corroborated by Rapp. King testified also that on another occasion following the warning, he stopped and talked to employees J. R. Stone and Boyd Eves who were well known opponents of the union campaign but that on this occasion, when Supervisor Dotson observed him talking to Stone and Eves who were both on the clock, Dotson not only did not take any disciplinary action against him, but also joined in the conversation. King's testimony which was corroborated in part by Rapp was un rebutted and I credit it.

Analysis

I find that the record amply established a prima facie case that Respondent gave King the warning for talking to Rapp, a known prounion employee because of King's then recently demonstrated support of the Union. Respondent's knowledge of King's and Rapp's support of the Union has been established as has its animus toward the Union and its supporters. I find that the imposition of the warning was a clear departure from Respondent's previous condonation of King's talking to employees on his way to his work area and was motivated by the Respondent's animus toward the Union and its supporters as part of an effort to stem suspected union discussions between two known union supporters. This is in sharp contrast to the subsequent instance wherein King's talking to antiunion employees while they were on the clock was condoned by Supervisor Dotson who joined in the conversation. I find the Respondent has failed to rebut the prima facie case and the July 18 warning was violative of Section 8(a)(3) and (1) of the Act. *Wright Line*, supra; *Roure Bertrand Dupont, Inc.*, supra.

5. Verbal warning issued to Brenda Furry

This allegation concerns the issuance of a verbal warning to former employee Brenda Furry on June 5. Furry who is no longer employed by Respondent and now resides in Michigan did not testify. However current employee John Brown did testify concerning Furry's union activities, Respondent's knowledge thereof and the imposition of discipline therefor. Brown testified he had observed Furry place prounion literature on the bulletin board by the timeclock in the Twisting Department on five occasions and that she was observed doing so by the third shift heat set supervisor on all five occasions and was observed by the second shift heat set supervisor on two occasions. Brown testified that on one of these occasions during the midnight change of shift, he heard Supervisor Brackett tell Supervisor Duke, "let's do it." He then observed them remove the prounion literature that Furry had just put on the bulletin board. Brown further testified that the next morning at about 7:58 a.m. he went to the supervisor's office to turn in his paperwork and was denied entry by Supervisor Duke. He then heard Furry ask "what about the equal time on the bulletin board's law" to which Twisting Manager Ray Wright replied, "[n]o one hangs anything up on the bulletin board except myself, my secretary, or supervisor." Furry's attendance record contains a verbal warning issued to Furry on June 5 at 7:45 a.m.:

Ray Wright gave Brenda an oral warning for passing out literature in the work area. He told her he knew of 3 other times she was told not to do this & she did it again on 6/4—He told her disciplinary action would be taken if she did it again.

Wright testified at the hearing that Furry's supervisor (unnamed) had informed him that she had distributed literature away from the break area and had removed materials posted by Respondent on a bulletin board and replaced them with unauthorized materials. Wright also testified that he had warned Furry before against distributing material (union literature) near the smoker's table which he considered a work area. At the time of this incident Respondent did not maintain a distribution

policy as the space underneath the heading "Distribution of Literature Policy" in its policy manual is blank. With respect to bulletin board use, Respondent introduced in evidence a written policy providing that only authorized material may be posted. However, the testimony of Brown which I credit establishes that employees regularly posted advertisements for yard sales, various items for sale, and revivals on one of the bulletin boards near the timeclock which was the same bulletin board on which Furry had posted the prounion literature. Wright admitted that he had observed various notices on the bulletin boards such as "[b]aby showers, motor-cross, tractor pulls, yard sales, church revivals that sort of thing." He testified he took these materials down but admitted he permitted the posting of thank you cards which were not related to work.

Analysis

I find that the General Counsel has established a prima facie case that the Respondent violated Section 8(a)(3) and (1) of the Act by the issuance of the verbal warning to Furry for distributing union literature in work areas and for posting it on the bulletin board. Respondent's animus toward the Union and its supporters has been established as has Respondent's knowledge of Furry's support of the Union and her activities on its behalf by her distribution of union literature and the posting of it on the Respondent's bulletin board for which she was issued the verbal warning. Respondent had no policy prohibiting the distribution of literature. Although the Respondent's written bulletin board policy restricts the bulletin board use to authorized information concerning the business of the Company, the testimony of Brown amply demonstrates that various notices and advertisements of personal interest to employees were regularly posted. I do not credit Wright's testimony that he routinely removed these items in strict adherence to the policy. I find it highly improbable that employees would continue to put notices and advertisements on the bulletin board in violation of a strictly imposed prohibition against doing so. Obviously, advertisements for sale of items could easily be traced to the owner of said items who had posted the advertisements as could many other notices. I further find it unlikely that if the Respondent had routinely removed these items from the bulletin board, that they would have reappeared with such regularity. I note that Respondent presented no evidence of discipline of other employees for distributing literature or posting notices on the bulletin board. I further note the testimony of Wright that he permitted the posting of "Thank You" notices. I find the Respondent has failed to rebut the prima facie case established by the General Counsel. I find the Respondent violated Section 8(a)(3) and (1) of the Act by the issuance of the verbal warning to Brenda Furry. *Wright Line*, supra; *Roure Bertrand Dupont, Inc.*, supra.

6. Recission of employee Mike Fowler's light duty assignment

This case involves an allegation that employee Mike Fowler was discriminated against by Respondent's removal of him from light duty status on May 10, 1996, for making comments at a meeting held for 15 to 20 employees by high ranking officials of Respondent's management. Fowler had incurred tendinitis in his left elbow in 1995, undergone surgery, and had been

out on workman's compensation for the disability when he was informed in December 1995 by Respondent's human resource manager for the Calhoun site, Sharon Brooks, that she had found light duty work for him which carried a higher remuneration than he received from disability under workmen's compensation alone. He commenced work on light duty status in December 1995 in the computer area but was transferred shortly thereafter to the maintenance department when the light duty work ran out in the computer area. He was restricted to lifting no more than 5 pounds and pushing 7 pounds with his left arm. In the maintenance department he was only to be required to fill and wash heater batteries and perform some cleanup work. However in the last week of April, Fowler advised Sharon Brooks in team member resources, that he was performing the regular maintenance duties of changing heater batteries, changing RFs, and headlights, in addition to his light duty assignment and he contended that he should be receiving maintenance pay. Brooks told Fowler he should not be performing work beyond his medical restrictions. She testified she proceeded to notify his supervisors of the restrictions and thought the matter was resolved.

About a week later on May 8, Respondent conducted small group meetings with its employees in order to answer several questions that had been raised by employees and any other questions or concerns of its employees. Fowler testified that the meeting was conducted by three management representatives "Jesse Leisure, and the Vice President of Aladdin Mohawk, and the guy over Human Resources of Aladdin Mohawk." The meeting was attended by 15 to 20 employees. General topics as to "what was going on inside the Plant" were discussed at the start of the meeting and then the Union was discussed. In response to a question by the General Counsel as to what he recalled "being said about Unions in that meeting?", Fowler responded, "One question I asked was they stopped gain sharing and gift certificates, and stuff like that." He addressed his comments to Jesse Leisure who is in charge of the distribution center. Leisure responded to his questions but Fowler could not remember at the hearing what Leisure had said. In response to a question by the General Counsel, "Aside from gain sharing and the gifts that you said that the Company had given, do you remember yourself . . . mentioning any other topics?" Fowler testified, "I mentioned me being on light duty work and regular maintenance work. Not getting paid for maintenance." Fowler testified further that 2 days later he was called to Ricky Coates' office and Jesse Leisure and Ricky Coates were talking and then Jesse Leisure turned around and said, "Hi Mike." Fowler had never been introduced to Leisure prior to this. After this he met with Coates and Sharon Brooks. Brooks told him they had no more light duty for him and his light duty status was terminated. Prior to this meeting he had complained about not getting maintenance pay to heater department maintenance head, Glen Stanley, and his area supervisor, John Haliday, and supervisor, Reese Jones. He was irritated because his arm was hurting worse and they kept giving him more work whereas Ricky Coates had told him, he would only be required to water batteries and to wash them. He also told Haliday and Stanley that it was dangerous to work on the batteries.

Sharon Brooks testified that in the last week of April Fowler came to her and told her he should be paid the same pay as a maintenance person as he was actually doing the same job as a maintenance person. She told him he should not be doing this work which involves maintaining and fixing lift trucks and changing batteries because this could lead to another injury or worsen his existing injury. He was concerned that his manager and supervisor would not work with him on this. She told him she would talk with them. She rewrote the job description and clarified his assigned duties to comply with his medical restrictions. She talked to the supervisor about it and considered it settled. The Respondent then sought to introduce the light duty job description she had prepared and the General Counsel objected on the ground that this had been subpoenaed and had not been furnished by the Respondent. I sustained this objection. Brooks also testified that about May 8, she was notified by her supervisor, Joe Wilbanks, that at a meeting held at the distribution center, Fowler had once again complained that he was working in a maintenance capacity and was not receiving maintenance pay. At that point she explained to Wilbanks what had previously transpired with Fowler and they decided to terminate his light duty restriction and place him back on workman's compensation as he was not working within his restrictions. She was unaware of his union sentiments. Wilbanks was not questioned by any of the parties concerning this matter.

Analysis

I find the General Counsel has failed to establish a prima facie case of a violation of the Act by reason of the termination of Fowler's light duty assignment. Initially I find that Fowler did not testify that he made any statement concerning the Union or his sentiments. It is a stretch to argue that his comments at the meeting called to address employee questions and concerns, would give rise to the conclusion that he was a prounion employee. Although these were certainly concerns over terms and conditions of employment, they do not support an inference that these questions labeled him as a union supporter. I further credit Brook's testimony that the removal of Fowler from his light duty position was motivated by concerns for his medical restrictions rather than because he was identified or perceived to be a union supporter. I attach no significance to the fact that Leisure had found out his name by the date of the May 10 meeting. I find that this allegation should be dismissed. *Wright Line*, 251 NLRB 1083 (1980); *Roure Bertrand Dupont Inc.*, 271 NLRB 443 (1984).

7. Written warning issued to Billy Rapp

Employee Billy Rapp operated a tufting machine in the tufting department. Rapp was an active union supporter who wore "Vote Yes" and "Union Yes" stickers, a UNITE button and hat, and posted prounion leaflets on the bulletin board, passed out union literature in the breakroom, and distributed leaflets at the gate. He had received a threat of discharge from Supervisor Clata Crider for removing antiunion literature from the bulletin board. On June 12, 2 days after he had passed out union literature at the plant gate, he was called into the office and given a written warning by Supervisor Ed Dotson in the presence of Supervisor Clata Crider for running nine beams of the wrong

yarn. Rapp complained to Crider at the time that he thought it was funny that “everybody is starting to get wrote up” and Crider said, “they told us to start writing people up.” Rapp testified that both Crider and Dotson then laughed. Rapp testified further that he did not believe he had run the wrong yarn. Dotson told Rapp that the lot number of the yarn that Rapp had loaded into the beam machine was mislabeled on the outside of the bundle. The written warning reads:

Billy is being given this warning for running 9 beams on the warper of the wrong yarn. Even though he saw was issued out wrong, he didn't compare to the lot number against the worksheet before warping. These beams will have to be used in preleader at a loss.

The Respondent contends that Rapp had a prior warning in 1993, which it relies on as grounds for the issuance of the written warning in the instant case. However, Respondent's disciplinary policy provides:

Major Offenses (Incident Reports) of six months standing or more on service records of Team Members will not be considered in disciplinary cases.

Further, Human Resource Manager Sharon Brooks testified that discipline such as warnings roll off an employees' record after 6 months. Thus I find that under the terms of Respondent's disciplinary policy and based on the testimony of Brooks that the prior warning could not be relied on by Respondent in considering the instant case. I further credit Rapp's un rebutted testimony that he did not believe he had run the wrong yarn and I note that since the Respondent did not choose to call either Dotson or Crider as a witness to support its contention that he ran the wrong yarn, Respondent has failed to demonstrate that Rapp did so. However, even assuming *arguendo* that Rapp did run the wrong yarn, I find the issuance of a written warning was at odds with its disciplinary policy that provides that a verbal warning (as opposed to a written warning) is “to be used for first signs of unsatisfactory work or conduct.” I also note that there was no evidence presented by Respondent of any disciplinary action having been taken against the employee who originally mislabeled the thread. I also credit Rapp's testimony concerning Crider's comments that the supervisors had been told to start writing people up and the laughter of both Crider and Dotson concerning Crider's statement.

Analysis

I thus find that the General Counsel has established a *prima facie* case of a violation of Section 8(a)(3) and (1) of the Act by Respondent by its issuance of the written warning to Rapp. Rapp was a known union adherent who had previously been threatened by Respondent's management and who was disciplined during the peak of union activity and shortly after he openly handbilled at the plant gate on behalf of the Union. Respondent's animus has been established and I conclude that the adverse employment action (the written warning) was motivated by Respondent's efforts to stem the union campaign. As Respondent did not call either Dotson or Crider, Rapp's testimony is un rebutted and I draw an adverse inference that the testimony of Crider and Dotson would have been unfavorable

to Respondent's position. I thus find Respondent has failed to rebut the *prima facie* case by the preponderance of the evidence. *Wright Line*, *supra*; *Roure Bertrand Dupont, Inc.*, *supra*.

8. Written warning issued to Edna Tudor

Edna Tudor, a tufting machine operator in the tufting department received a written warning, on June 7, for running a low loop line in over 800 feet of carpet on June 6. Tudor was a known union supporter who testified without rebuttal that she wore union buttons and stickers at the workplace. She had previously been questioned by Supervisor Crider at the time-clock as to who had taken down antiunion literature posted on the bulletin board. Tudor had never received any discipline prior to June 6. The Respondent's stated policy in its employment manual provides that employees will receive verbal counseling prior to being issued written warnings for lesser offenses such as for workmanship. However, in the instant case, Tudor was initially issued a “final” written warning for her first instance of running a low loop line. Tudor had never received any discipline of any kind prior to this. Tudor testified she was running two clutch machines, 19 and 53, at the same time when this incident occurred. Machine 53 was in a changeover going from small cones of thread to larger cones. Machine 19 was in a run down mode wherein it was running down small (little bitty) cones of thread and was giving Tudor problems because the clutches go “out on it and leaves you low lines and high lines (defects on the carpet), and I was paying more attention to 19 than I was 53 because it was running better.” Machine 53 ran a low line. On the next day (June 7) when she came to work, Supervisor Clata Crider told her she had run bad carpet. Later that shift Crider took her to Supervisor Ed Dotson who told her he hated to do it but “we've got to write you up for running low line.” Tudor did not read the written warning but signed it and returned to her job and then read it and saw that it was a “final warning.” She then went to Crider and Dotson who told her that he had to do what they told him to do. The next day she saw Tufting Department Manager Dollie Davenport, and asked her why she had been issued a final warning and Davenport said, “Well Edna . . . I would have bet my whole pay day that you hadn't been on that job when you run that low line.” The next day or two she spoke to Davenport's supervisor, Site Manager Lou Childers and told him she had received the final warning. He made notes in his notebook. She explained to him that she had been on two clutch machines and it was almost impossible to run them. The next day Davenport told her she was removing the “final” warning and told Dotson to white out the “final” warning and bring her a copy. However, the written warning otherwise remained in place.

Respondent presented a September 17, 1991 memorandum regarding the inspection of carpeting, which Tudor acknowledged she had signed. The memorandum provides that carpeting should be inspected every 5 minutes or 50 feet but is silent concerning the operation of a clutch machine or when an operator is operating two machines at the same time as in this case. Tudor testified that Machine 53 ran so fast that 50 feet is run “before you can get back around the machine.” Tufting Department Manager Dollie Davenport, testified she was called to the printer (dye house) by the quality assurance department

where the employees were trying to determine why the carpet was moving in and out on the selvage and she spotted a low line (defect) which ran for over 800 feet. She returned to the tufting department and told Second-Shift Supervisor Dotson to look up who had run this carpeting and give them a "final" warning. When she told him the machine it had been run on he knew it was Tudor and she told him to give her a final warning because she was upset that Tudor had run over 800 feet of carpet which "was a lot of carpet to be running with a solid line." The next day or so, she and her supervisor, Lou Childers, spoke about it and she decided that Tudor deserved a "lesser warning and that I was probably upset the day before," and the warning was reduced to a written warning. In response to questions on cross-examination, Davenport testified that discipline should be issued to an operator who runs over 50 feet of defect in carpeting if they are running a single machine, but that if an operator is running two different machines they may not be disciplined for exceeding 50 feet of defective carpet but that whether the machine is a clutch machine is not determinative as clutch machines are not more difficult to operate than other machines.

Analysis

The record established that Tudor was a known union supporter and Respondent's animus toward the Union and its supporters and has been established. It has also been established that Respondent issued Tudor a "final" written warning for running over 800 feet of defective carpet well in excess of the 50 feet permitted under its 1991 memorandum. Further, the timing of this warning is suspect coming as it did in the midst of the union campaign and its close grouping with other discipline to employees and the statement made to employee Rapp by Crider and joined in by Dotson's laughter to the effect that Respondent's management was issuing more frequent warnings, particularly after the threat of Crider and other members of management that it would do so. Under these circumstances I conclude that the General Counsel has established a prima facie case of a violation of the Act by the issuance of the "final" written warning later reduced to a "written warning" to Tudor. However, I find that the Respondent has rebutted the prima facie case by the preponderance of the evidence as it has demonstrated that it would have taken the action against Tudor even in the absence of an unlawful motive. Initially, I credit Davenport that she was upset by the magnitude of the over 800 feet of defective carpet, and this was the reason for the issuance of a "final" warning to Tudor which, on reflection, and after discussion with her supervisor, Childers, was reduced to a "written warning." Davenport candidly acknowledged that there is some leeway beyond the 50 feet or 5 minutes check of carpeting being run when an operator is running more than one machine. However, in this instance, Tudor ran over 16 times as much bad carpeting as permitted by the 1991 memorandum and in terms of time did not check the carpeting for a period of over 1 hour and 20 minutes. Under any circumstances, I find this a major infraction under Respondent's disciplinary policy which would justify a written rather than a verbal warning. I shall recommend that this allegation be dismissed. *Wright Line*, supra, *Roure Bertrand Dupont, Inc.*, supra.

9. The written warning and termination of Debra Johnson

The record established that Debra Johnson was a well known supporter of the Union, who attended union meetings, wore union buttons, distributed union literature, sang a union song to her supervisor, and spoke up on behalf of the Union in a captive audience meeting conducted by the Respondent on May 19. An 8-year employee, Debra Johnson had received a written warning for excessive tardiness on December 13, 1995. She received a second written warning on May 20, for violations of the attendance policy the day following the Respondent's captive audience meeting held to combat the union campaign after Director of Manufacturing Joe Yarbrough had angrily asked what her name was when she spoke up on behalf of the Union, called certain working conditions at Respondent's plant, slavery and asked permission to leave the meeting which was denied. Neither warning is alleged as a violation in the complaint. The Respondent has a 6-month-limitation on disciplinary action wherein under the terms of its disciplinary policy, warnings roll off of an employee's disciplinary record after the completion of 6 months. This is in conformance with its disciplinary policy wherein three warnings issued an employee in a 6-month period result in termination. It is not necessary that the warnings are of like kind (i.e., attendance related) but as in Debra Johnson's case, can result from a combination of different offenses, such as attendance and poor workmanship. On June 4, Debra Johnson produced 400 feet of poor quality carpet when she did not catch a "low line" (a major defect) while she was operating two machines. It is standard operating procedure that tufting machine operators are required to inspect their carpet for defects every 5 minutes or 50 feet. If the defects are discovered during the tufting process the operator is to stop the machine, determine the cause, and fix the problem or call maintenance and to send defective carpet to the mending frame. If the defective carpet is not discovered during the tufting phase, it continues on in the manufacturing process for dyeing, cutting, and packaging. Once these steps have occurred, the carpet cannot be repaired and must either be sold as second quality, cut up for sale as scrap, or used as a preleader.

On June 12, Tufting Machine Manager Dolly Davenport was informed by the reinspect department that she had some off quality carpet. She went to the reinspect area, viewed the carpet, took a sample of the defective carpet and the finished roll number which she inputted into the computer to obtain the work in process (WIP) number whereupon she discovered that the roll in question (WIP number 4500455) had been run by Debra Johnson on June 4, 1996. At this point she left a note for then Supervisors Laura Watts and J. R. Parker to give Debra Johnson a written warning for running the defective carpet and permitting it to continue on in the manufacturing process. When Watts saw Davenport's note and instruction to give Debra Johnson a written warning, she reviewed Johnson's file and noted that this would be her third warning within the 6-month period and that she therefore needed approval prior to the issuance of the warning which would result in termination under Respondent's disciplinary policy. Watts then called Davenport who was home and left a message on her answering machine. Davenport testified she was not aware that this would be Johnson's third warning and she therefore went up the chain of

command to her supervisor, Lou Childers, on her next shift on June 13 and discussed it with him. She and Childers then decided in accordance with Respondent's policy to issue the warning to Johnson and left another note instructing Watts and Parker to issue Johnson the third warning which would result in Johnson's discharge. They did so at the start of their shift on June 13.

At the hearing Johnson testified that her machine had a problem that night and that she noted a wave in the first roll of carpet (roll #4500455) as she took over from the previous shift operator. Johnson testified that she called attention to the wave which was caused by the second shift having put the wrong backing on the carpet. She testified that she called attention of Watts and Parker to the problem and that Parker instructed her to continue to run the carpet so he and a mechanic called to the machine could discover and fix the problem and that Parker and the mechanic spent a great deal of time working on her machine while she ran the carpet that night. She testified that Watts had also called Angie Nesbitt from quality control to determine the cause of the problem. Watts and Parker denied that they were aware of any problem on the first roll. Watts testified that she noticed a wave on the second roll (#4500456) run by Johnson and called Parker and Angie Nesbitt from quality control and that she had Johnson stop the roll while she attempted to determine the cause. Watts also testified she was unaware of a mechanic having worked on the machine that night and did not believe Parker was by the machine most of the night. Parker testified he was not called to look at the carpet until the second roll and that he did not spend a large portion of the shift by the machine and did not recall a mechanic having worked on the carpet that night. Neither Nesbitt nor the mechanics were called by the parties. Watts is no longer employed by Respondent and testified she left after she was married as she was unable to transfer to the day shift.

Analysis

I find that Respondent did not violate Section 8(a)(3) and (1) of the Act by its discharge of Debra Johnson. Initially, I find that the General Counsel has established that Johnson was a known union supporter who engaged in protected concerted activities on behalf of the Union in its campaign to represent Respondent's production employees. Respondent's animus toward the Union and its supporters has been established. The discharge of Debra Johnson was an adverse employment action closely related in time to the upcoming election and with several other adverse employment actions taken against other union supporters. The combination of all of these elements demonstrates a prima facie case that Respondent's discharge of Debra Johnson was motivated by animus directed against her because of her engagement in concerted activities. I have noted the disparity in the enforcement of Respondent's disciplinary policy (i.e., the failure to discharge employees for several serious offenses noted as intolerable offenses warranting discharge). However, my review of the overall testimony of Davenport, Watts, and Parker convinces me that Johnson was issued the third warning for a legitimate reason related to her failure to discover a serious defect. By all accounts she would have discovered the defect if she had inspected the carpet every

50 feet or 5 minutes as set out in the standard. Johnson thus failed to inspect the carpet roll #4500455 for a total of 400 feet or 80 minutes giving rise to the written warning. It appears by all accounts (Parker, Watts who has left the Company and has no stake in the outcome of this case, and Davenport) that there was no abuse of discretion or irregularity in the consideration of and imposition of discipline. Thus Watts and Parker held off on the issuance of the warning and Watts informed Davenport that this would be Johnson's third warning and Davenport told her to hold off further until she reviewed the matter with her supervisor, Childers, after which she left another note for Parker and Watts to issue the warning and terminate Johnson which they did. As the Respondent contends, there is no evidence that Davenport was involved in any of the alleged 8(a)(1) violations. I thus conclude that although the records set out in posthearing exhibits show that there has been some disparity in the imposition of discipline there is evidence that discipline has been imposed for producing defective carpeting. I conclude that the General Counsel has established a prima facie case of a violation of the Act by the issuance of the third warning to and discharge of Debra Johnson. I find however that the prima facie case has been rebutted by Respondent by the preponderance of the evidence. *Wright Line*, 251 NLRB 1083 (1980); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984). I shall recommend that this allegation be dismissed.

10. Discharge of Rodney Atkisson

Rodney Atkisson was employed at Respondent's spinning plant as a winder server on the third shift from midnight to 8 a.m. Atkisson had been initially employed by Respondent in April of 1995, and discharged in October 1995 because of three accumulated written warnings for attendance problems and rehired by Respondent a month later. Atkisson suffers from hypoglycemia, a form of diabetes from which he becomes weak with a tendency to pass out and which can lead to a diabetic coma, and there is substantial evidence in the record that the Respondent had accommodated his extensive attendance problems, only some of which were medically related. Atkisson testified that in April, shortly after the advent of the union campaign, he was sitting at the break table discussing an antiunion pamphlet about the Union with some of his coworkers. The pamphlet showed the Union with weapons. He commented to Supervisor Robin Chatmon that the Union was going to give us (the employees) weapons to defend ourselves and laughed. Chatmon became upset and asked him if he was seriously considering voting for the Union. He said, "yes," and Chatmon told him it would be foolhardy to vote for the Union as the plant could shutdown, leaving employees without jobs and taking away their benefits. Subsequently 2 weeks after the advent of the union campaign, his supervisor, Steve Eivers, told him and a coworker that if they voted for the Union, the plant would shutdown and that Respondent "had the funds to shutdown, pick up and leave. Himself, including us, would be without jobs." Eivers also asked him if he supported the Union and he nodded yes in response. Subsequently in June he requested a meeting with Eivers to discuss rumors from other employees and several telephone calls he had received that if he voted for the Union he would be discharged. He has no idea

who made the telephone calls as he did not recognize the voice. At this meeting he reported the rumors and telephone calls to Eivers. Eivers said, "[H]e had no idea where they was getting their information from." At this meeting Eivers told him "he could legally ask me about the Union" and asked him how he was going to vote and told him if he voted yes the plant would shutdown, pick up and leave and there would be a lot of people without jobs. He became upset as he had not asked to meet with Eivers to talk about the Union. On this night, a Monday, five or six employees came up to him on the shift, told him they had heard he was terminated and inquired what he was doing in the plant. Atkisson testified that the next night (June 4) the rumors became worse as employees continued to approach him and inquire what he was doing in the plant as they had heard he had been discharged. An hour-and-a-half or 2 hours after the start of the shift, he looked for his supervisor, Steve Eivers, but was unable to locate him. He then wrote a note to Eivers which said,

Steve,

I'm sorry about this, but I can not work in this situation. I'll be back in the morning to talk with Robert. (Wages)

Sorry,

Rodney Atkisson

He then clocked out and left after completing only 2 hours of his shift. He came back to the plant the next morning but was unable to speak with Robert Wages, a management official. He was able to speak to Phil Riner and Freddie McClure, two members of management. He attempted to explain to them his reasons for leaving prior to the completion of his shift. "They became rude and hostile towards me and told me that since I had left I no longer had a job at Mohawk Industries. Freddie McClure stood up and threw his arm up and told me to shut up and get out of his office." He then left and went to "what we refer to as the Glass House" and spoke with Joe (Wilbanks). He discussed the situation with Wilbanks who asked him if he could return later to discuss the matter with Robert Wages which he did later that day. He met with Wages with Wilbanks present and explained what had led to his leaving his shift early. Wages indicated he would look into the matter and asked him to return the following week to discuss the matter further. He did so and met with Wages again who told him, he had investigated the matter and that the termination would not be reversed.

Atkisson was absent eight times in the period of January through March 1996, with one unexcused absence in January and one in March. He received only verbal but no written warnings during this period. In April 1996 he had two unexcused absences. In May he was absent 6 days with two of the absences being unexcused. On April 15, 1996, the first day of handbilling by the Union, he received a written warning for excess absences. This warning followed his absences on March 29 and April 1, 1996, due to car trouble and on April 12, 1996, for illness. On May 3, 1996, he was absent due to personal problems and received another written warning for excess ab-

sences. On May 23, 1996, his Supervisor Steve Eivers reviewed his attendance problems with him following 3 days of absence for illness on May 20, 21, and 22, and Eivers told him he may be terminated if more attendance violations occur. On June 4, 1996, Atkisson came to work and complained to Eivers of phone calls he had received wherein he was told he "would lose his job for sure," according to his separation record filled out by Eivers. This record further states that on June 4, Eivers found a note on his desk from Atkisson which stated he "could not work in this situation and left." The note also stated that he would return in the "morning to talk to Robert (Wages)." On this record Eivers notes "6-5-96 Did not call in. Assumed quit." This record is also signed by Department Manager Robert Wages. Phil Riner, the plant administrator for the spinning plant testified that Atkisson was also absent on May 31, 1996, and he instructed his supervisor, Eivers, to ask Atkisson to bring in medical documents the following day for review. On June 3, Atkisson forgot his medical documents but was allowed to work and worked the entire shift. On Tuesday, June 4, Atkisson left a note on Eivers desk and went home early. Riner testified that this is grounds for termination. He testified that management of Respondent considered Atkisson as having resigned as he had left his job and not returned.

Analysis

The General Counsel and Charging Party contend that a prima facie case of a violation of the Act has been established by reason of the issuance of the third written warning and termination of Atkisson on June 5, noting that Atkisson's problematic attendance record had long been tolerated by Respondent and it was only after the advent of the union campaign and Atkisson's outspoken support of the Union that the April 15 and May 24 warnings were given to Atkisson and that he was terminated on June 5, whereas Respondent contends he voluntarily quit. It must be noted at the outset that the timing of the April 15 warning on the day of the advent of the union campaign in conjunction with the threats and other evidence of animus by Respondent's supervisors and members of management as found above support the finding of a prima facie case of a violation by reason of the June 5 termination of Atkisson because of his known support of the Union. While Atkisson's attendance record was undeniably poor, the evidence clearly shows that his attendance problems were tolerated and his illness accommodated following his rehiring after his termination in 1995. The issuance of the written warnings to Atkisson in April and May and his termination in June by Respondent correspond close in time to Supervisor Crider's statement that Respondent had told its supervisors to issue more warnings. Moreover the continued issuance of threats of plant closure and job loss by Supervisor Eivers during his meetings with Atkisson concerning his attendance problems reinforce Respondent's point that union supporters will be punished as predicted by Crider that they would be put on a list and that management would ride them. I find the campaign of rumors that Atkisson, who I credit in this regard, was going to be terminated supports the inference that the word was put out by Respondent's management and that Respondent seized on Atkisson's departure from the plant during his shift as an early quit which I find it

was not. Rather I find that Respondent discharged Atkisson because of his support of the Union. I find that the Respondent has failed to rebut the prima facie case established of a violation of Section 8(a)(3) and (1) of the Act. *Wright Line*, supra; *Roure Bertrand Dupont, Inc.*, supra.

11. The alleged constructive discharge of Chris Johnson

Chris Johnson was a well thought of employee who had been employed as an outside inspector for a portion of his time as well as an offline carpet inspector in the reinspect department. However, once he declared his support of the Union, his outside inspection duties were transferred to another affiliate of Respondent and he was relegated to the most unpleasant of carpet inspection jobs, that of operating a manual roll to examine used carpets which were often soiled with animal urine and feces, in order to determine whether they were defective or salvageable. He was also told that he would suffer a reduction in pay and a downgrade in his job. He testified that his status as an employee with a bright future with Respondent as related to him by Respondent's management changed radically after his open support of the Union with his prospects as an employee dim and that he therefore found his position untenable and left his employment. The General Counsel and the Charging Party contend that he was constructively discharged.

Johnson was employed from November 1989 until June 20, 1996. At the time he left, he was an offline and outside inspector in the reinspect department with a rate of pay of \$10.52 per hour. His department was in the distribution center. Lead inspector jobs paid \$12 per hour. His immediate supervisor was Danny Hartline. He participated in union activities and about the last week in May wore a union hat and patch which each bore the name UNITE. Respondent's management held group meetings with the employees in his department. Prior to his show of support for the Union, his supervisor, Danny Hartline, had "come up and laugh, tell jokes, just talk about a little bit of everything, on the job and off the job." However, after his show of support he "got a cold shoulder" from Hartline as "The kind of one on one, we used to talk at a lot, kind of quit and the only action that he had with me was relating to the job." In addition to his duties as an offline inspector and an outside inspector he also performed a clerical job on the replacement table. As an outside inspector he would travel to outside mills to which Mohawk had sent 15 foot width carpets which Mohawk did not generally do to an outside coater to have it coated. He "would look at the quality of the carpet and the coating, rate it as to first quality or second quality." If it was second quality he would document why it was second quality and what department that quality defect came from. He spent 1 to 4 days per week performing the outside inspections. He also performed offline inspection at Calhoun as the rolls of carpet came off the coater in Calhoun and repaired defective carpets. He did not spend much time performing this offline inspection and repair work, "maybe once a week, sometimes twice a week." He performed the clerical portion of his job on the replacement table the majority of the time. In this position, the heister driver would put a roll of carpet on the table. Johnson would then get the ticket off the roll and the screen, get an order number, go into another screen and it would tell him what the defect

was according to the customer. He would relay this information to the lady running the table and they would both examine the carpet to find any defects.

When he reported to work at 8 a.m. on June 9 following a week of vacation, he was met by his supervisor, Danny Hartline, who told him there had "been a change in my job and that they were cutting out outside inspecting." He asked if there was a problem with his job performance and Hartline said, "[N]o, that everybody was happy with my job, . . . that it was a decision made in upper management that they were going to let Aladdin, which was already in Dalton, and—all the outside coaters I went to were in Dalton and Chatsworth—they were going to let the Aladdin inspectors, since they were already in Dalton, let them go across town and do it versus letting me come from Calhoun to get up there and do it. It was cheaper for the company." He asked Hartline if he had a job and Hartline said, "[H]e had a job for me. He put me on the rollup on the return table." The rollup job normally paid around \$8 an hour whereas he was then earning \$10.52 an hour. He asked if his "pay would get cut and he said not right now. But they were in the process of evaluating jobs and that it would be my job. If they evaluated it eight dollars (\$8) an hour, that's what I would get." When Hartline had interviewed him for the job, he had told him "that if I kept my nose clean and done a good job that I could go places in that position. That it had a lot of responsibilities and if I could prove myself to be good and able to handle the job, that I could probably advance to a better position." Other employees who had held this job had been promoted. At the time Hartline told him of the elimination of the outside inspection work from his duties, he did not say anything about the clerical duties he had been performing at the replacement table. However, this function was also eliminated from his duties. He asked Hartline how long he would be on the rollup job and Hartline said, "[M]aybe a week till whenever, he really didn't know." When he had performed the clerical job on the replacement table, he had the opportunity to work with managers from other departments on a daily basis. The rollup job that he was reassigned to was in a remote part of the department and was regarded as one of the lowest dirtiest jobs in the plant. The carpeting he was inspecting has a 7-year warranty against wear and had been used by the customer for 2 or 3 years and was matting down and "could have animal urine, feces, anything on the carpet. Just odor, nasty carpet." This job also required a lot of physical exertion as this rollup table was not automated and he was required to stick a pole in the roll wrapped around the core "to push it and pull it to keep it running straight." Sometimes the rolls were a 150 to 200 feet long. The other rollup tables were automated. There was no training for this job whereas he had been trained for 2 months for his outside inspection duties which required a great deal of paperwork. The rollup job required no paperwork. Johnson performed the new duties on the rollup table until June 20 when he telephoned Sharon Brooks in personnel and told her he was not happy with his job, that he had been demoted for no reason and asked her if there was something else in the mill. She said she could offer him a job in shipping on the second or third shift. He told her he had more seniority than most of the employees on day shift as transfer to the day shift is based on sen-

iority and he had been on days for 4 years. He told her that he felt that after his 7 years of service, the Company did not respect him any longer and that he was seriously thinking of leaving. This telephone conversation had taken place while he was at work and when he hung up he turned around and saw Danny Hartline standing behind him. Hartline told him he should use the pay phone and that he was on company time and he needed Johnson on his job. Johnson was caught up with his work at the time. Prior to this he had used this phone in the workplace and had been observed by Hartline without comment. He clocked out at the end of his shift on this date and has not returned to work since. He had been working part time at a trucking terminal and has worked full time for them since leaving Mohawk. He left his employment with Mohawk because he had gone from a job with a future to no security in his job. While an employee of Respondent he had participated in community affairs as a volunteer on behalf of the Company at a safety fair and wore the Company's mascot uniform. He had invited customers in and had served as a tour guide in the departments in the mill to explain how their carpet was produced. The Respondent had received a letter from a representative of a group from British Columbia to whom he had given a tour of the facilities. The letter stated in part, "The young fellow, Chris Johnson, was an excellent tour guide and seemed genuinely excited about working for Mohawk Industries." He had held the offline and outside inspection jobs about 2 years prior to the hearing. On cross-examination he testified he spoke to Carl Cothran, Hartline's supervisor, after his conversation with Hartline. Cothran also told him that the outside inspection job would be performed by an Aladdin employee in Dalton. Cothran told him sometimes you have to take a step backward to go forward, that there would be a job for him but it may be rollup. Cothran also told him the department was going to be reorganized and that positions would be assigned based on seniority. He (Johnson) said that would mean with his seniority, he would end up a lift truckdriver and that he was making more as a lift truck driver at Reeves Trucking where he worked part time and that he might as well go over there. At the time Mohawk had too many employees in his department. He did not report to work on the day (a Friday) after his conversation with Brooks and did not inform Hartline or Cothran he was quitting but called Brooks the following Tuesday and told her he was quitting. He acknowledged that prior to the elimination of his inspector duties he had filled in and driven a forklift when the driver was out and had helped the person doing the rollup when he was not engaged in outside inspection work, but contended he did not do the rollup work. There was always someone on the rollup job. However there had been a person assigned to this job but there had been two shifts and the Company eliminated the second shift and moved employees on the second shift to the day shift and Hartline had too many employees on the day shift and had various employees perform the rollup work. Johnson also testified that Hartline had told the employees in the break room on several occasions that unions had caused other mills to shutdown when they had moved in and that unions did not do anything for employees but just hurt the Company. The changes in Johnson's job were communicated to him by Hartline on June 9, 5 days prior to the election

scheduled for June 14. Carl Cothran testified the decision to transfer Johnson's duties to Aladdin was made at the end of May.

Analysis

I find that the Respondent violated Section 8(a)(3) and (1) of the Act by its constructive discharge of its employee Chris Johnson. I credit Johnson's testimony in its entirety and find it fully supports the conclusion that the elimination of his outside inspection duties, his clerical duties, and his offline inspection duties and his assignment to the rollup table on a full-time basis coupled with the bleak outlook given to him by Hartline and Cothran that he would be relegated to a lower rated job and probably demotion were calculated to punish him and push him to quit once he made his support for the Union known in late May. Respondent's antiunion animus has been amply demonstrated in this case as well as that of Johnson's supervisor, Hartline, who threatened plant closure to Johnson and other employees if the Union were successful in its campaign and won the election scheduled for June 14. As the General Counsel and the Charging Party contend, the timing of Respondent's actions against Johnson almost immediately after Johnson's open support of the Union only 4 days prior to the election supports the inevitable conclusion that the actions taken against Johnson were unlawfully motivated. I do not credit the testimony of Cothran and Hartline that these changes in Johnson's duties were economically motivated. I found their testimony to be contrived to cover up the real reason for the elimination of Johnson's duties as an outside and offline inspector and his clerical duties and his transfer to the manually operated rollup table. I do not grant the General Counsel's motion to strike Respondent's exhibits of the mileage expenses or Cothran's and Hartline's testimony. However, I do not credit their testimony and I find that even assuming *arguendo* that the outside inspection duties of Johnson's were eliminated for valid financial reasons, there was no valid reason substantiated for the removal of Johnson's clerical and offline inspection duties and his relegation to the rollup table.

To prove a *prima facie* case of constructive discharge, the General Counsel must prove (1) the burdens imposed on [the employee] were intended to cause and did cause a change in his working conditions that were so difficult or unpleasant as to force him to resign; and (2) such burdens were imposed by the Company because of [the employee's] union activities. *Crystal Princeton Refining Co.*, 222 NLRB 1068 (1968). Once the General Counsel has proven a *prima facie* case of constructive discharge, the burden shifts to the Company to prove a legitimate, nondiscriminatory reason for the change in conditions.

Grand Canyon Mining Co., 318 NLRB 748, 760 (1955).

The Board's two-part test in constructive discharge cases is:

First, the burdens imposed upon the employee must cause, and be intended to cause, a change in working conditions so difficult or unpleasant as to force him to resign.

Second, it must be shown that those burdens were imposed because of the employee's union activities.

Mfg. Services, 295 NLRB 254, 255 (1989), enfd. 902 F.2d 1009 (D.C. Cir. 1990); see also *Crystal Princeton Refining Co.*, 222 NLRB 1068, 1069 (1976). See also *Sheraton Inn Airport*, 232 NLRB 670 (1977), Re: more onerous working conditions (such as the rollup table in this case) can satisfy criteria for constructive discharge.

I find that the General Counsel has established a prima facie case of a constructive discharge. I find Respondent has failed to rebut the prima facie case established by the General Counsel. *Wright Line*, 251 NLRB 1083 (1980); *Roure Bertrand Dupont, Inc.*, 271 NLRB 443 (1984), and that Respondent violated Section 8(a)(3) and (1) of the Act.

CONCLUSIONS OF LAW

1. The Respondent is an employer within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent violated Section 8(a)(1) of the Act, by

(a) The unlawful interrogation of employee Wesley Silvers by Supervisor Clata Crider concerning his union sympathies and creating the impression of surveillance of employees' union activities and threatening him with plant closure or keeping the employees out on strike as the company would not agree to a contract, thus, conveying the futility of the employees selection of the Union as their collective-bargaining representative.

(b) The threat of reprisal made to Silvers by Creel Boss, Aileen Story, and affirmed by Supervisor Clata Crider.

(c) The threat of plant closure issued by Supervisor Crider to employee Carolyn Rogers.

(d) The threat of job loss and plant closure issued to employee Carolyn Rogers and other employees by Supervisor Clata Crider and the second incident wherein Crider told the employees that Respondent had a list of all employees who had signed union cards and had the "agitators" at the top of the list with plans to "ride them" once "this mess is over."

(e) The threat issued by Supervisor Clata Crider to employees Edna Tudor, Wanda Gladen, and Rachel Sutterbook that the Respondent would discharge whoever had removed antiunion literature from the breakroom door which had been posted by the Respondent.

(f) The interrogation by Supervisor Crider of employee Billy Rapp concerning his having removed antiunion literature from the breakroom door and the threat of discharge issued by Crider to Rapp for doing so.

(g) The interrogation by Supervisor Robin Chatmon of employee Rodney Atkisson concerning his union sympathies and the threat of plant closure, job loss, and loss of benefits issued by Chatmon to Atkisson if the employees selected the Union as their collective-bargaining representative.

(h) The interrogation by Supervisors J. R. Parker and Laura Watts of employee Roy King concerning his union sympathies.

(i) The interrogation by Supervisor Steve Eivers of employee Rodney Atkisson concerning his support of the Union and the threat issued by Eivers to Atkisson of plant closure and job loss if the employees selected the Union as their collective-bargaining representative.

(j) The interrogation by Supervisor Linda Williams of employee Scott Gaylor concerning his union support.

(k) The threat by Supervisor John Rainwater to the shipping department heister drivers that Respondent would close down the plant or move it if the Union "came in" (won the election).

(l) The threat issued by Supervisor Ed Dotson to employee Billy Rapp that Respondent might relocate its machinery if the Union were selected as the employees' collective-bargaining representative.

(m) The creation of the impression of surveillance of the employees by Supervisor Gary McCarley and the threat of reprisals against union instigators issued by McCarley to employee John Brown.

(n) The instigation, sponsorship, and participation in an effort to "assist" employees with the revocation of their signed union cards.

(o) The change in telephone policy announced by Supervisor John Rainwater to the heister drivers.

(p) Threat of loss of benefits issued by Supervisor Andy Tidmore to employee James Baumgardner.

4. Respondent violated Section 8(a)(3) and (1) of the Act by:

(a) The verbal warnings issued to the heister drivers.

(b) The verbal warning issued to employee Roy King.

(c) The verbal warning issued to employee Scott Gaylor on April 22 for distribution of union literature.

(d) The verbal warning issued to employee Brenda Furry.

(g) The verbal warning issued to employee Billy Rapp.

(f) The discharge of Rodney Atkisson.

(e) The constructive discharge of employee Chris Johnson.

5. Respondent did not violate the Act by

(a) The verbal warning issued to employee Scott Gaylor for low production on May 22.

(b) The recission of employee Mike Fowler's light duty assignment.

(c) The written warning issued to employee Edna Tudor.

(d) The written warning and termination of employee Debra Johnson.

6. The aforesaid unfair labor practices in conjunction with Respondent's status as an employer affect commerce within the meaning of Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative actions designed to effectuate the policies of the Act. The Respondent, having discriminatorily discharged and refused to reinstate employees, it must offer them reinstatement and make them whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended³

ORDER

The Respondent, Mohawk Industries, Inc., Calhoun, Georgia, its officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Engaging in unlawful interrogation of its employees concerning their union sympathies, activities, and support of the Union.
 - (b) Creating the impression of surveillance of its employees' union activities.
 - (c) Threatening its employees with plant closure or relocation, discharge, loss of jobs and benefits, unspecified reprisals; that it has a list of union supporters and that the instigators are at the top of the list and that it plans to "ride them" and to issue warnings; with the futility of the selection of the Union as their collective-bargaining representative as it will not sign a labor agreement and/or will shutdown or relocate.
 - (d) Instigating, facilitating, and assisting the revocation of the employees' signed union cards.
 - (e) Enforcing an invalid bulletin board policy restricting the posting of prounion notices and the distribution of prounion literature in nonwork areas while posting and/or permitting the posting of antiunion notices and the distribution of antiunion literature.
 - (f) Restricting telephone use in order to stem the union campaign.
 - (g) Issuing verbal and written warnings to union supporters and discharging union supporters and constructively discharging union supporters.
 - (h) In any like or related manner restraining or coercing employees in the exercise of the rights guaranteed them under Section 7 of the Act.
2. Take the following affirmative actions necessary to effectuate the policies of the Act.
 - (a) Within 14 days from the date of this Order, offer Rodney Atkisson and Chris Johnson full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed.
 - (b) Make Rodney Atkisson and Chris Johnson whole for any loss of earnings and other benefits suffered as a result of the

³ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

discrimination against them, in the manner set forth in the remedy section of the decision.

(c) Within 14 days from the date of this Order, remove from its files any reference to the unlawful discharges, and the unlawful warnings issued to the heister drivers, employees Roy King, Brenda Furry, Billy Rapp, and Scott Gaylor and within 3 days thereafter notify the employees in writing that this has been done and that the discharges and warnings will not be used against them in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Calhoun, Georgia, copies of the attached notice marked "Appendix."⁴ Copies of the notice, on forms provided by the Regional Director for Region 10, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since April 15, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

(g) IT IS FURTHER ORDERED that the complaint is dismissed insofar as it alleges violations of the Act not specifically found.

⁴ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."